

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

SHARON BRAMBLE,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
AGENCY,

Respondent.

PCHB No. 90-56

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This is an appeal of a Notice and Order of Civil Penalty (No. 7141), assessing \$1,000 fine for alleged violation of Section 9.11(a) of Regulation I and WAC 173-400-040(5). A formal hearing before the Pollution Control Hearings Board, Harold S. Zimmerman, presiding, was held on July 27, 1990, in Lacey, Washington. Board Chair Judith A. Bendor has reviewed the record.

Appellant Sharon Bramble represented herself. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Keith D. McGoffin. The proceedings were recorded by Kathryn A. Beehler, reporter for Gene Barker and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was made. From the testimony, exhibits, and arguments, the Board makes these:

FINDINGS OF FACT

I

On January 11, 1990, Puget Sound Air Pollution Control Agency

FINAL FINDINGS OF FACT,  
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1 received a complaint from Wilma Clark about woodsmoke coming from a  
2 neighbor's chimney. PSAPCA inspectors responded and talked to the  
3 complainant and her sister, who was staying with her at the time.

4 II

5 One inspector saw the smoke, agreed there was a woodsmoke problem  
6 emanating from the chimney next door, the residence of Sharon Bramble,  
7 18011-112th Avenue SE, Renton, Washington.

8 III

9 That day Wilma Clark filled out and signed a formal complaint  
10 form stating that the smoke prevents her working outside; it affects  
11 clothes on the clothesline, and affects her and her sister's sinuses.

12 IV

13 On January 17, PSAPCA sent Notice of Violation (No. 26410) to  
14 Sharon Bramble, which she received two days later. The Notice alleged  
15 PSAPCA Regulation I, Section 9.11(a) had been violated. No civil  
16 penalty was issued.

17 V

18 After receiving the Notice of Violation, Sharon Bramble called  
19 PSAPCA to ask what she should do to correct the problem. The agency  
20 sent a pamphlet of the agency, entitled "Focus on Washington's Wood  
21 Smoke Law", and a Department of Ecology folder "Heating with Wood."  
22 An inspector also talked to Sharon Bramble about proper burning  
23 techniques: the need to burn at high temperatures, to not shut down  
24  
25  
26

1 the damper, to keep the vents open, to use dry, seasoned wood, and to  
2 have the chimney cleaned.

3 VI

4 Ms. Bramble bought a stovepipe thermometer, had the chimney  
5 checked for unseen problems, and had the chimney cleaned. She used  
6 seasoned wood.

7 VII

8 On February 5, 1990, at 10:30 a.m., one of the PSAPCA inspectors  
9 responded to a second complaint from Wilma Clark. The inspector went  
10 to the area. The woodsmoke odor was detectable while she was still in  
11 the agency vehicle, was also detectable in the Clark home, and smoke  
12 was visible from the complainant's kitchen window. The smoke was  
13 thick, gray and drifted down into the Clark backyard. The inspector's  
14 eyes watered, throat hurt, and she wanted to avoid breathing the  
15 smoke-laden air in the Clark's backyard.

16 VIII

17 PSAPCA sent Notice of Violation No. 26415 to Ms. Bramble on March  
18 7, 1990. On the same day the Agency sent Notice and Order of Civil  
19 Penalty for \$1,000. Ms. Bramble filed an appeal with this Board on  
20 March 19, 1990.

21 IX

22 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
23 adopted as such. From these Findings of Fact, the Board makes these:  
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1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over the parties and the subject of  
4 this appeal. Chpts. 43.21B and 70.94 RCW.

5 II

6 We conclude that the appellant violated WAC 173-400-040(5), and  
7 Section 9.11(a) of Regulation I of PSAPCA.

8 WAC 173-400-040(5) states in pertinent part:

9 (5) Emission of air contaminants detrimental to  
10 persons or property. No person shall cause or permit  
11 the emission of any air contaminant from any source,  
12 including any air contaminant whose emission is not  
13 otherwise prohibited by this chapter, if the air  
14 contaminant causes detriment to the health, safety, or  
15 welfare of any person, or causes damage to property or  
16 business.

17 Section 9.11(a) of Regulation I states in pertinent  
18 part:

19 (a) It shall be unlawful for any person to cause  
20 or permit the emission of an air contaminant in  
21 sufficient quantities and of such characteristics and  
22 duration as is, or is likely to be, injurious to human  
23 health, plant or animal life, or property, or which  
24 unreasonably interferes with enjoyment of life and  
25 property.

26 We conclude that the smoke was detrimental to Ms. Clark's welfare  
27 and unreasonably interfered with her enjoyment of life and property,  
violating the statute and the local implementing regulation.

28 III

29 After the first Notice of Violation, Ms. Bramble did take several

1 steps to alleviate the woodsmoke problem, but they apparently fell  
2 short of solving the problem.

3 It is possible that the measures recommended by PSAPCA may solve  
4 the problem. If they do not, Ms. Bramble should consider adding to  
5 the recreation room the gas heating which already serves the rest of  
6 the house.

#### 7 IV

8 The amount of the penalty is based upon several factors,  
9 including past history of violation, those efforts undertaken to  
10 correct the problem before the penalty issued, the severity of the  
11 problem, and so forth. Once aware of the problem, Ms. Bramble  
12 undertook several measures to prevent a reoccurrence. However, the  
13 smoke significantly impacted her neighbor. We conclude that the  
14 \$1,000 fine should be REDUCED to \$500, with \$200 due and \$300  
15 SUSPENDED provided there are no unexcused air pollution violations  
16 within the next two years.

#### 17 V

18 Any Finding of Fact deemed to be a Conclusion of Law is hereby  
19 adopted as such. From these Conclusions of Law, the Board enters this:  
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ORDER

PSAPCA's Notice and Order of Civil Penalty No. 7141 is AFFIRMED as to liability, with the penalty REDUCED to \$500, with \$200 due, and \$300 SUSPENDED provided that appellant has no unexcused air pollution violations within two years.

DONE this 34<sup>th</sup> day of September, 1990.

POLLUTION CONTROL HEARINGS BOARD

  
HAROLD S. ZIMMERMAN, Presiding

  
JUDITH A. BENDOR, Chair

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